



THE CAPITOL CONNECTION

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LEGISLATIVE CALENDAR

<i>January 1</i> New Legislation Takes Effect
<i>January 5</i> Legislature Reconvenes

EMERGENCY POWERS: JUST IN TIME

Recently enacted legislation sponsored by the Judicial Council was instrumental in allowing the judicial branch to respond to the devastating wildfires in Southern California in October.

Assembly Bill 1641 by Assembly Member Rick Keene (R-Chico) amended Government Code section 68115 to give greater authority to the Chief Justice when natural or man-made disasters threaten the orderly operation of the courts. The bill also included an urgency provision so that it became effective when it was signed by the Governor on September 4. One of the bill's provisions allows the Chief Justice to grant a request of a presiding judge to declare a day on which a disaster necessitates the closure of a court a judicial holiday for the purposes of the deadlines imposed for the filing of documents in civil cases.



*Assembly Member
Rick Keene
(R-Chico)*

When wildfires in Southern California caused the closure of government offices in San Diego, the presiding judge in San Diego requested authorization to declare October 27 and 28 judicial holidays. The Chief Justice granted this request, giving civil litigants immediate relief from filing deadlines and eliminating the need for the court to hear motions to grant relief later. Such steps could not have been taken prior to the enactment of AB 1641.

In response to the closure of the San Diego courts, the Chief Justice also issued an emergency order authorizing the court to extend time periods related to various criminal proceedings, including the time within which arrestees must be arraigned.

The need for clear authority to extend deadlines in response to emergencies was

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NEW POLICY COORDINATION AND LIAISON COMMITTEE MEMBERS

The Judicial Council's Policy Coordination and Liaison Committee, which considers and adopts positions on behalf of the council on pending legislation, recently welcomed four new members. Justice Laurence Kay is the new vice-chair of the committee. Justice Kay is the presiding justice of Division Four of the First District Court of Appeal. Judge William J. Murray, Jr. of the San Joaquin County Superior Court and Judge William A. MacLaughlin of the Los Angeles County Superior Court were also appointed to the committee. The outgoing committee members whose spots are being filled are former vice-chair Justice Norman Epstein of the Second District Court of Appeal, Judge Brad Hill of the Fresno County Superior Court and Judge Heather Morse of the Santa Cruz County Superior Court. The fourth new member of the committee is Judge Eric Taylor of the Los Angeles County Superior Court. Judge Taylor is the president of the California Judges Association and takes the place of former CJA president, Judge Gregory O'Brien, also of Los Angeles.

COURT FUNDING: DECEMBER MEETING WILL FOCUS ON STABILITY

Chief Justice Ronald M. George has called together leaders among the judiciary and the bar to discuss a critical goal for the Judicial Council: ensuring stable and adequate funding for the judicial branch. The meeting, to be held in San Francisco on December 16, is a precursor to the work of the soon-to-be-appointed Commission to Secure Stable Funding for Justice. The December meeting will highlight the volatility of current funding mechanisms, provide background on the policy goals of state trial court funding, and discuss possible options to provide secure and stable funding.

The current budget crisis has intensified the council's focus on developing both short-term and long-term plans to ensure stable and adequate funding, and ensure access to justice for all. The budget cuts made in 2002-2003 have resulted in decreased services, shorter hours, and employee lay-offs. In addition, numerous fees were increased in order to allow the courts to continue to operate. In the short term, a working group (whose members will also serve on

the Commission to Secure Stable Funding for Justice) will review and make recommendations related to court fees. Information will be collected from the courts and practitioners to determine necessary modifications. For example, recommendations might address ways to ensure that fees are charged uniformly and consistently from court to court. In addition, the working group will discuss the need for a regular process for adjusting fees.

Over the long term, the Commission will consider and make recommendations about budget process changes. These changes may include a broad range of options, such as potential funding sources for the courts, the implementation of workload-based funding formulas, and changes in the way the judicial branch budget is submitted to and reviewed by the other two branches of government.

EMERGENCY POWERS

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highlighted in the hours following the September 11, 2001 terrorist attacks. Although the attacks occurred on the east coast, many government offices in California, including some courts, closed and sent employees home as a safety precaution. However, since neither the President nor the Governor had declared a state of emergency in California, the authority of the Chief Justice to extend the time period by which an arrestee must be arraigned could not be invoked. Rather than risk allowing alleged criminals to go free, judicial branch and executive branch officials scrambled to see the necessary declarations were made so that the time periods could be appropriately extended.

The council sponsored AB 1641 largely in response to these circumstances, recognizing that there are many situations in which closing courts may be necessary, but that do not rise to the level of a declared emergency. The declaration of a judicial holiday in these circumstances effectively extends the time periods in civil and criminal proceedings and allows the courts to respond appropriately to emergencies or natural disasters.

DEMOCRATS AGREE ON NEW SPEAKER

After two other contenders dropped out of the race, Assembly Democrats appear to have settled on Assembly Member Fabian Nuñez (D-Los Angeles) as the next speaker, to replace the current speaker, Herb Wesson (D-Culver City). Wesson cannot seek reelection to the Assembly due to term limits. The Assembly is expected to officially elect Nuñez to the speaker's post shortly after the first of the year. It has not yet been determined when Wesson will step down. Assembly Member Nuñez was first elected to the Assembly in 2002.

Assembly Republicans have also announced leadership changes. Assembly Member Dave Cox (R-Fair Oaks), who has also reached his term limit, is stepping aside after the new year and Assembly Member Kevin McCarthy (R-Bakersfield) will assume the duties of Republican Leader. Also, Assembly Member Rick Keene (R-Chico) has been named as the Assembly Republicans' lead representative in the budget process, replacing Assembly Member John Campbell (R-Irvine).

RIPPED FROM THE HEADLINES

"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from The Capitol Connection.

"Law Officers Get Free-Speech Guidelines" *San Francisco Chronicle* (October 18, 2003)

California law enforcement officers should not spy on citizens exercising their constitutional rights of speech, religion and association unless they have reason to think a crime has been or will be committed ~ no matter what John Ashcroft says.

That's the gist of one of a series of legal guidelines that state Attorney General Bill Lockyer sent to every police chief and sheriff in the state this week in the form of a book titled, "Criminal Intelligence Systems: A California Perspective."

"Put bluntly, it is a mistake of constitutional dimension to gather information for a criminal intelligence file where there is no reasonable suspicion" that a crime has been or will be committed, Lockyer's guideline says.

If California's investigators follow that guideline, they will be using a different rulebook than the FBI.

"State's Fee Increases Leave Few Unscathed" *Sacramento Bee* (October 19, 2003)

Californians will pay more next year for everything from speeding tickets to television sets as a painful hangover from the worst budget crisis in state history.

Lawmakers held the lid on taxes but not on fines or fees. Tax increases require a two-thirds vote of the Legislature, which was made impossible this year by Republican Party opposition. Fine or fee increases require only a simple majority vote of lawmakers and, in some cases, fees can be raised administratively or by affected agencies.

"Davis Democrats would (boost) fees before eliminating waste or fraud or duplication ~ and that frustrates people," Assemblyman Kevin McCarthy (R-Bakersfield) said. "When people pay a higher fee for hunting or fishing, are they getting a greater quality of hunting or fishing?"

Assemblyman Darrell Steinberg, D-Sacramento, said the GOP's hard line against any new tax increase, even on wealthy families, left little choice but to hike tuition and vehicle license fees to preserve adequate police, fire, library, park and other essential state services.

"March Ballot Pivotal" *Stockton Record* (November 9, 2003)

The March primary ballot is shaping up to be profoundly important for schools, labor, business and, most notably, the nascent Arnold Schwarzenegger administration.

Voters will likely decide whether Democrats were right to

offer health benefits to low-wage workers, whether schools deserve more money, and whether to streamline California's moribund budget process.

And if Schwarzenegger goes to the ballot with debt-reduction bonds, the fate of his administration will be back in voters' hands just months after he was catapulted into office.

Whatever Schwarzenegger does, the March 2 ballot will feature, in addition to the presidential primary, two fiscally focused ballot measures, Proposition 55 and Proposition 56.

Proposition 55 is a \$12.3 billion school bond, which follows the \$13.5 billion voters agreed to borrow last November.

Proposition 56 is the Budget Accountability Act, supported by a variety of union groups. It would withhold pay from legislators who can't agree on a budget by the constitutional deadline. But it also features a more controversial component that would lower the vote threshold required to pass a budget, essentially lowering it to the point where Democrats could enact a tax increase or spending plan without a single Republican vote.

Two referendums ~ efforts to overturn recently passed laws ~ may also land on the March ballot.

"Brulte Passes Top GOP Torch To Gov.-Elect" *Inland Valley Daily Bulletin* (November 15, 2003)

Arnold Schwarzenegger is in; Jim Brulte is out ~ at least as the individual recognized as the most powerful Republican in California. And for his part, Brulte couldn't be happier.

Brulte, the state Senate minority leader from Rancho Cucamonga, is no longer the highest ranking Republican in Sacramento.

In the coming months, Republican lawmakers are likely to be in more demand by Democrats for bipartisan cooperation on legislation than they have been in the past five years, as a bill with GOP support will tend to be viewed more favorably by Schwarzenegger than one without. In that regard, Brulte said, the phone has been ringing more than it used to, a trend he expects to continue.

On many of the issues of major concern to voters, Brulte signaled his caucus has not changed its position. Anything, deficit borrowing included, is preferable to tax hikes; businesses need massive workers' compensation premium rollbacks; and SB 60 must be repealed, not amended, he said.

He expects there to be a substantial amount of goodwill for Schwarzenegger among legislative Democrats. Brulte does not believe they will abandon liberal policy goals and vote differ-

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RIPPED FROM THE HEADLINES

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ently than their philosophy dictates ~ nor should they, he said.

But Schwarzenegger's promise to lead and engage lawmakers on both sides of the aisle ~ something Davis rarely did ~ should reap results.

"The dirty little secret of legislatures is, they admire, respect and react to strong executive leadership. Legislatures whine sometimes, they complain about it, but at the end of the day, a strong executive can achieve most of his policy goals," Brulte said.

"Davis Praised For His Bench Appointments" *San Francisco Chronicle* (November 16, 2003)

Gov. Gray Davis, despite his many failures during the past five years, leaves office Monday universally praised for what many say will be his finest and most lasting legacy ~ his judicial appointments.

Democrats and Republicans say Davis named judges who were excellent, experienced lawyers. Staying true to his cautious nature, court observers say, he selected judges who didn't stray too far to the left and weren't considered activists.

At the same time, he changed the complexion of California's judiciary, choosing a greater percentage of female and minority judges than any other governor in the state's history.

"His appointments have been excellent, both in terms of quality and achieving more diversity on the bench to reflect California's changing population," said Chief Justice Ronald George, a Republican.

"Davis Symbolized A Political System Rejected By Voters" *San Diego Union Tribune* (November 16, 2003)

Gov. Gray Davis may be best remembered as the person who mastered and came to symbolize the peculiar political culture of California during the past 20 years ~ a culture that was soundly rejected in the recall election. Call it politics without people.

It's a form of politics in which campaign volunteers play a diminished role with the advent of professional fund-raisers, media gurus, special interest representatives and campaign strategists.

Events with voters ~ town hall-style meetings, rallies and campaign speeches ~ are more rare and largely for show and are replaced by small meetings with donors, focus groups, nightly polls and, most importantly, negative television ads.

As a prodigious fund-raiser and skilled political tactician, Davis thrived in a system that seemed to be made for an aloof

politician who didn't appear to enjoy campaigning or cultivating relationships.

"He became the poster boy for all that the public believes is wrong about politics ~ special interest control of government, negative campaigning, isolated politicians," said Barbara O'Connor, director of the Institute for the Study of Politics and Media at California State University Sacramento.

"They were among the best practitioners in the country. Unfortunately for them, the rules changed," O'Connor said.

As Republican consultant Dan Schnur put it, "By perfecting the system, he helped goad the voters into a backlash against it."

"Many Parole Violators Will avoid Prison" *Los Angeles Times* (November 19, 2003)

The Schwarzenegger administration agreed to a court settlement Tuesday that will keep thousands of nonviolent parole violators out of prison, a move expected to save the state money in years ahead by reducing the population behind bars.

Under the agreement, thousands of parolees who now go directly to jail or prison to await a hearing on their alleged parole violation may instead be diverted to a residential drug treatment center, home detention or electronic monitoring, among other options.

That new approach, to begin in January, would apply only to parolees whose records are free of violent or serious felonies and whose parole violations are considered "administrative." An administrative violation would include a positive drug test or failure to meet with a parole agent as scheduled.

"Governor paroles killer ~ apparent new policy; Schwarzenegger, unlike Davis, heeds judgment of board" *San Francisco Chronicle* (November 22, 2003)

Gov. Arnold Schwarzenegger took the first step this week in setting out his agenda on crime ~ and distinguishing himself from his predecessor ~ by allowing a Sacramento man convicted of a 1985 murder to be released on parole.

The governor's decision signaled a dramatic departure from the approach taken by former Gov. Gray Davis, who was accused by civil rights groups of having in effect a no-parole policy for convicted murderers. Of the 267 inmates convicted of murder and granted parole during his nearly five years in office, Davis approved the release of only eight, including three women who said they killed their victims after years of abuse.

A spokesperson for Schwarzenegger gave a general outline of the governor's approach to parole cases. "Gov. Schwarzenegger

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intends to let the Board of Prison Terms do its job," said Vincent Sollitto. "Only when he has a strong conviction that a clear error has been made does he intend to review the granting or denial of parole."

"Citizens use law to pursue drug firms – Citing unfair competition and weak FDA oversight, consumer coalition sues giant pharmaceutical companies" *San Francisco Chronicle* (November 23, 2003)

Convinced that the Food and Drug Administration won't curb aggressive marketing that can hurt patients and hike medical costs, an insurgent citizen movement is using a controversial state consumer law to challenge manufacturers. In civil suits against a range of drug and biotech companies, private citizens are turning to California's courtrooms to change the ground rules for the industry.

The emerging consumer strategy, which bypasses FDA prerogatives, alarms drug and biotechnology firms. In the most organized and far-reaching effort, a Boston consumer coalition that blames drug firms for soaring health care costs is bringing its fight to California. The nationwide group, Prescription Access Litigation, is challenging company practices ranging from drug advertising to doctors' freebies.

The coalition is seeking judgments against firms accused of exaggerating drug benefits, touting products for unproven uses or paying doctors to drum up expensive prescriptions.

The companies deny wrongdoing, while industry officials warn that the lawsuits raise a nightmare scenario of state court judges in 58 counties setting their own rules for practices usually overseen by the FDA.

The Unfair Competition Law is a tool used by state prosecutors to combat anti-competitive or corrupt business dealings. It also allows private citizens or groups to file suit in the name of the public. When these suits succeed, judges can order a halt to unfair business practices.

Trial attorneys, consumer groups and many prosecutors see the law as a bulwark against violations too numerous to be pursued by the state attorney general or county district attorneys. Industry groups say attorneys abuse the law by filing frivolous suits to reap quick settlements, not to protect consumers.

To seek under California's Unfair Competition Law, consumer advocates need not prove that any patient was harmed by a drug, only that its promotion amounted to an unfair business practice.

"Revving Their Engines" *The Recorder* (November 24, 2003)

Two years ago, California car dealers and trial lawyers held a series of secret meetings to try to avoid a political war.

The influential interest groups, both with access to millions of dollars in campaign contributions, got together to discuss how to prevent abuses under California's liberal unfair competition law, Business & Professions Code §17200.

Three plaintiffs firms had targeted car dealers, using 17200 to sue mainly over mistakes in advertising copy. Nearly all of the state's 1,400 dealers were hit, and they eventually paid \$10 million in settlements.

The trial lawyers and dealers met outside the Capitol and kept the gatherings off-the-record to avoid attention, according to participants. They wanted to strike a deal and then take their package to the Legislature.

The talks, however, failed. And now California voters are about to witness an initiative fight that by some estimates could cost \$100 million. Both sides have already started unfolding their strategies to win over voters and are attempting to collect allies to help with the fight.

If legislators can craft a bill to modify 17200 that pleases businesses and isn't too distasteful to the trial lawyers, the car dealers could still hold their fire. After a legislative battle earlier this year that ended in a contentious stalemate, few are holding hope.

Signature gathering hasn't started yet to put the initiative on the November 2004 ballot. But already trial lawyers have responded to the initiative as a declaration of war and are running their own polls to determine whether they'll respond with an initiative of their own.

"Bond Plan, Spending Cap have only a Week to Pass Key Test" *Mercury News* (November 29, 2003)

There is a lot at stake in the coming week. The Republican governor's plan for a massive bond and a spending cap must win approval by Friday to be placed on the March ballot, or the state could face a cash crunch next year. The Legislature appears set to follow Schwarzenegger's call to repeal the law that allows illegal immigrants to apply for driver's licenses. And local governments are pressing lawmakers to pass a bill to reimburse them for lost car-tax revenues, warning that their budgets will have to be slashed.

What happens will say a lot about how well Schwarzenegger can work with the Democratic-controlled Legislature.

Less than two weeks ago in his inaugural address, he promised to create a "miracle based on cooperation, good will, new ideas." To deliver on that commitment, Schwarzenegger will hold closed-door talks next week with Democratic leaders in what promises to be a marathon of harried deal-making typically seen only when a session ends.

JUDICIAL APPOINTMENTS

Here are the final judicial appointments announced by Gov. Gray Davis from April through November 2003.

Court	Judge	Previous Position
Court of Appeal, Second Appellate District	Madeleine I. Flier, Associate Justice	Judge, Los Angeles County Superior Court
	Laurie D. Zelon, Associate Justice	Judge, Los Angeles County Superior Court
Court of Appeal, Third Appellate District	M. Kathleen Butz, Associate Justice	Judge, Nevada County Superior Court
Court of Appeal, Fourth Appellate District	Judith McConnell, Presiding Justice	Associate Justice, Court of Appeal, Fourth Appellate District
	Joan Irion, Associate Justice	Judge, San Diego County Superior Court
Court of Appeal, Fifth Appellate District	Betty L. Dawson, Associate Justice	Judge, Merced County Superior Court
Court of Appeal, Sixth Appellate District	Richard J. McAdams, Associate Justice	Judge, Santa Cruz County Superior Court
Alameda County Superior Court	Beverly Daniels-Greenberg	Commissioner
	John M. True	Private Practice
	C. Don Clay	First Assistant United States Attorney
	Evelio M. Grillo	Private Practice
	Wynne S. Carvill	Private Practice
Contra Costa County Superior Court	Nancy Davis	Deputy District Attorney
	Leslie G. Landau	Private Practice
	Barry Goode	Legal Affairs Secretary to Governor Davis
Imperial County Superior Court	Barrett J. Foerster	Private Practice
Los Angeles County Superior Court	Joseph Shiro Biderman	Commissioner
	Holly Kendig	Private Practice
	James D. Otto	Private Practice
	Brian Yep	Private Practice
	Drew E. Edwards	Deputy Alternate Public Defender
	Frederick C. Shaller	Private Practice
	Burt Pines	Judicial Appointments Secretary to Governor Davis
	Michael D. Carter	Deputy District Attorney
	Michael A. Latin	Deputy District Attorney
	Wendy L. Kohn	Private Practice
	Jan G. Levine	Private Practice
Michael P. Linfield	Private Practice	
Madera County Superior Court	James E. Oakley	Private Practice
Mendocino County Superior Court	David Nelson	Private Practice
Modoc County Superior Court	Francis "Fritz" Barclay	Alturas City Attorney
Nevada County Superior Court	Robert L. Tamietti	Private Practice

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JUDICIAL APPOINTMENTS

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Court	Judge	Previous Position
Orange County Superior Court	David A. Hoffer	Federal Prosecutor
	Linda S. Marks	Private Practice
	Mark Millard	Private Practice
	Salvador Sarmiento	Commissioner
	Douglas Hatchimonji	Private Practice
	John C. Gastelum	Research Attorney, Court of Appeal
Riverside County Superior Court	Craig G. Riemer	Senior Appellate Court Attorney
	Bernard J. Schwartz	Commissioner
Sacramento County Superior Court	Robert C. Hight	Director, California Department of Fish & Game
	Allen Sumner	Chief Deputy Legal Affairs Secretary to Governor Davis
	Stephen W. White	Inspector General for the State of California
San Bernardino County Superior Court	Marsha G. Slough	Private Practice
	David A. Williams	Private Practice
	Bryan F. Foster	Private Practice
	Janet M. Frangie	Private Practice
San Diego County Superior Court	Robert P. Dahlquist	Private Practice
	Patricia Garcia	Commissioner, San Diego County Superior Court
	Theodore M. Weathers	Commissioner, San Diego County Superior Court
	Randa M. Trapp	Corporate Attorney
	Yvonne Esperanza Campos	Assistant United States Attorney
	Julia Craig Kelety	Private Practice
	William H. McAdam	Judge Pro Tempore
San Francisco County Superior Court	Suzanne G. Ramos	Assistant United States Attorney
	Kathleen A. Kelly	Assistant United States Attorney
San Joaquin County Superior Court	Linda L. Lofthus	Private Practice
San Luis Obispo County Superior Court	Charles Stevens Crandall	Private Practice
Santa Barbara County Superior Court	George C. Eskin	Private Attorney
	Arthur A. Garcia	Commissioner
Santa Clara County Superior Court	Aaron Persky	Deputy District Attorney
	Carrie A. Zepeda	Private Practice
	Philip H. Pennypacker	Private Practice
	Vincent J. Chiarello	Private Practice
Santa Cruz County Superior Court	John Jeffrey Almquist	County Supervisor
Shasta County Superior Court	Stephen H. Baker	Private Practice
Solano County Superior Court	Robert S. Bowers	Deputy District Attorney
	Michael Mattice	Deputy District Attorney
Sutter County Superior Court	Brian R. Aronson	Deputy District Attorney
Tulare County Superior Court	Lloyd L. Hicks	Private Practice
Yolo County Superior Court	Kathleen M. White	Court Executive Officer
	David Rosenberg	County Supervisor



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NEW GOVERNOR SWORN IN



Chief Justice Ronald M. George congratulates newly sworn in Gov. Arnold Schwarzenegger as First Lady Maria Shriver looks on. The new governor wasted little time in getting to work, calling the Legislature into three extraordinary sessions to deal with the budget, workers compensation reform, and to repeal a bill allowing undocumented immigrants to obtain drivers' licenses. The governor's budget for the 2004-05 fiscal year is due to the Legislature on January 10.

News from the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at www.courtinfo.ca.gov. To subscribe to these newsletters, contact PU-BINFO@jud.ca.gov.

CFCC Update: Reports on developments in juvenile and family law, including innovative programs, case law summaries from the AOC's Center for Families, Children and the Courts; grants and resources, and updates on legislation and rules and forms. Published three times a year. See www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm.

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